

1 Raul Huerta & Kathleen Huerta
2 13024 Malvasia Way
3 Rancho Cucamonga, CA 91739
4 Cell: (909) 899-9562
5 Plaintiffs, In Pro-Per

6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

8 ED CV 12 - 01702

VAP

(SPx)

10 RAUL HUERTA & KATHLEEN
11 HUERTA, as

12 Plaintiffs,

14 vs.

15 CITIMORTGAGE, INC; QUALITY
16 LOAN SERVICE CORPORATION;
17 and DOES 1 THROUGH 10
18 INCLUSIVE,

19 Defendants,

)
) **COMPLAINT FOR VIOLATION**
) **OF FEDERAL LAWS**
)

1. DECLARATORY RELIEF
TITLE [28 U.S.C. §§ 2201, 2202]
2. NEGLIGENCE
3. QUASI CONTRACT
4. VIOLATION OF
[12 U.S.C. § 2605]
5. VIOLATION OF TITLE
[15 U.S.C. §§ 1692 et seq.]
6. VIOLATION OF CALIFORNIA
BUSINESS AND
PROFESSIONS
[CODE § 17200, et seq.]
7. ACCOUNTING

23 JURY TRIAL DEMANDED

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I. JURISDICTION AND VENUE

1. This Court has original jurisdiction over the claims in this action based on Title [28 U.S.C. §§ 1331, 1343, 2201, 2202], [Title 12 U.S.C § 2605], Title [15 U.S.C. § 1692] Title [42 U.S.C. § 1983] which confer original jurisdiction on federal district courts in suits to address the deprivation of rights secured by federal law.¹

2. This Court also has supplemental jurisdiction over the pendant state law claims because they form a part of the same case or controversy under Article III of the United States Constitution, pursuant to [Title 28 U.S.C. § 1367].

3. This Court has original jurisdiction over the claims in this action based on [Title 28 U.S.C. § 1332] which confers original jurisdiction on federal district courts in suits between diverse citizens that involve an amount in controversy in excess of \$75,000.00.

4. The unlawful conduct, illegal practices, and acts complained of and alleged in this complaint were all committed in the Central District of California and involved real property located in the Central District of California. Therefore, venue properly lies in this District, pursuant to [Title 28 U.S.C. § 1391(b)].

II. THE PARTIES

5. PLAINTIFFS, Raul Huerta and Kathleen Huerta, at all times herein relevant to the complaint are the owners of real property commonly known as 13024 Malvasia Way, Rancho Cucamonga, CA 91739. ("Plaintiffs")

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¹ The Ninth Circuit instructs that in actions brought under 28 U.S.C. § 2201, district courts must first determine whether there is actual controversy within its jurisdiction by analyzing the factors enumerated in *Brillhart v. Excess Ins. Co.*, 316 U.S. 491 (1942). The *Brillhart* factors require the Court to (1) avoid needless determination of state law issues; (2) discourage litigants from filing declaratory actions as a means of forum shopping; and (3) avoid duplicative litigation. *Brillhart*, 316 U.S. at 495; *see also Schaffer v. Citimortgage* No. CV 11-03919, 2011 WL 2437267 (C.D. Cal. June 15, 2011). As held by the court *Schaffer*, this action does not involve a needless determination of state law issues, does not involve forum for shopping, and is not duplicative litigation.

1 6. DEFENDANT, CITIMORTGAGE, INC; a New York Corporation; as the
2 purported original servicer of the alleged debt (*"Debt Collector & alleged Creditor*
3 *of the alleged debt"*)

4 7. DEFENDANT, QUALITY LOAN SERVICE CORPORATION
5 (Quality); a California Corporation; alleged Trustee of the Deed of Trust by
6 Trustor. (*"Debt Collector and alleged Trustee of the Deed of Trust"*).

7 8. DOES 1 THROUGH 10 INCLUSIVE, Plaintiffs do not know the true
8 names and nature of defendants DOES 1 THROUGH 10 INCLUSIVE, and will
9 amend the complaint when their true identities have been ascertained according to
10 proof at trial.

11 9. Whenever reference is made in this complaint to any act of any
12 defendant(s), that allegation shall mean that such defendant acted individually and
13 jointly with the other defendants.

14 10. Any allegation about acts of any corporate or other business means that
15 the corporation or other business did the acts alleged through officers, directors,
16 employees, agents and/or representatives while they were acting within the actual
17 or ostensible scope of their authority.

18 11. At all relevant times, each defendant committed the acts, caused or
19 directed others to commit the acts, or commit the acts alleged in this complaint.
20 Additionally, some or all of the defendants acted as the agent of the other
21 defendants, and all of the defendants acted within the scope of their agency if
22 acting as an agent of the other.

23 12. At all relevant times, each defendant knew or realized that the other
24 defendants were engaging in or planned to engage in the violations of law alleged
25 in this complaint. Knowing or realizing that the other defendants were engaging in
26 or planning to engage in unlawful conduct, each defendant nevertheless facilitated
27 the commission of those unlawful acts. Each defendant intended to and did
28

1 encourage, facilitate, or assist in the commission of the unlawful acts, and thereby
2 aided and abetted the other defendants in the unlawful conduct.

3 **III: GENERAL FACTUAL ALLEGATIONS**

4 13. The Plaintiffs are informed and believe and allege thereon that
5 defendants are third party strangers to their alleged debt and mortgage and have no
6 ownership interest entitling them to collect payment or declare a default. The
7 defendants have been engaged in an elaborate business practice to deceive,
8 misrepresent and have schemed to commit fraud and other acts of fraud against the
9 Plaintiffs in order to collect on alleged debts, Defendants have resorted to
10 "papering the file" by fabricating and filing an "Corporate Assignment of Deed of
11 Trust" (Exhibit A), employing individuals who have no authority or personal
12 knowledge of the facts to which they attest, and falsely representing to Plaintiffs
13 and the court that they have the right to take the Plaintiffs real property away. Not
14 only is defendants' conduct a criminal violation of California's Mortgage Fraud
15 Statute, Cal. Penal Code section 532(f)(a)(4)², and an affront to long-standing
16 property laws, but their reliance on fabricated and forged documents undermines
17 the integrity of the judicial system. Through this action, Plaintiffs seek to stop
18 defendants fraudulent practices, discover the true holder in due course of the
19 alleged debt evidenced by the "Promissory Note", and determine the status of
20 defendants' claims.

21 **IV. INTRODUCTION**

22 14. During the high times of the mortgage refinancing and mortgage
23 origination era 2002-2007 Wall Street investors looked to feed their insatiable and
24 reckless greed for profit by tapping directly into the American dream - home
25 ownership. Mortgage lenders and investment banks aggressively lured the
26

27 ² Cal. Penal Code section 532(f)(a) provides that "a person commits mortgage fraud if, with the intent to
28 defraud, the person does any of the following...(4) files or causes to be filed with the recorder of any
county in connection with a mortgage loan transaction any document the person knows to contain a
deliberate misstatement, misrepresentation, or omission."

1 American people into the predatory loans with teaser interest rates and into
 2 purchasing homes with inflated appraisals³ and under the promise that the booming
 3 real estate market would continue to boom. Wall Street took the soon to be toxic
 4 loans and bundled them into "*Mortgage CitiMortgage, Inked Securities*" through
 5 a process known as "*Securitization*". These "*Securities*" were then sold to
 6 investors in the form of certificates, whereby the investors became the
 7 "*Certificateholders*" of the securities that were to be fed by the toxic loans.

8 15. The Defendants CitiMortgage, Inc and others became facilitators of this
 9 process by gathering large numbers of loans originated through other entities; the
 10 process is referred to as "*Pooling of Loans for Securitization*", the Defendant
 11 pooled and placed these loans into "*Common Law Trusts*" and issued Certificates
 12 in exchange of Notes that were transferred into the "*Securitized Trust*". As the
 13 Certificates were traded into the marketplace the Wall Street players placed their
 14 bets and purchased contracts that would pay them in the case of default; they
 15 *shorted* the same market they were feeding.

16 16. Knowing that the predatory loans would soon default and turn into toxic
 17 assets Wall Street placed his bets accordingly and bought exotic insurance products

21
 22 ³ (Reuters) - A former home appraiser will receive \$14.5 million as part of a whistleblower
 23 lawsuit that accused subprime lender Countrywide Financial of inflating appraisals on
 24 government-insured loans, his attorneys said Tuesday. Kyle Lagow's lawsuit sparked an
 25 investigation that culminated in a \$1 billion settlement announced in February between Bank of
 26 America Corp (NYS:CITIMORTGAGE, INC - News) and the U.S. Justice Department over
 27 allegations of mortgage fraud at Countrywide, his attorneys said in a news release. Bank of
 28 America bought Countrywide in 2008. Lagow's suit was one of five whistleblower complaints
 that were folded into the \$25 billion national mortgage settlement that state and federal officials
 reached with Bank of America and four other lenders the year. His suit was unsealed in
 February, but the amount of his settlement had not been disclosed.
<http://finance.yahoo.com/news/bank-america-whistleblower-receives-14-232819912>

1 in the form of Credit Default Swaps⁴. The eventual meltdown of the market
2 provided Wall Street with even more ridiculous profits.

3 17. However, as Wall Street which includes our Defendants CitiMortgage,
4 Inc and others, rushed to "*Securitize*" these loans they forgot their own rules and
5 written compliance documents that are required to be followed by the letter of the
6 law. Wall Street created a situation by which the "*Mortgage CitiMortgage, Inc*
7 *Securities*" that were supposed to be CitiMortgage, Inc by mortgages were
8 actually not secured by anything except the number of dollars associated with the
9 alleged transactions and not by any actual mortgages to CitiMortgage, Inc the
10 securities⁵. Under the standard model for securitization the "Notes" were
11 *supposed* to be sold and transferred into a trust pool "*Securitized Trust*" that holds
12 the promissory notes as collateral on the securities bought by investors
13 ("*Certificateholders*"). These "*true sales*" allow the original lenders to move the
14 notes off their books, eliminating the need to maintain capital-adequacy reserves
15 against defaults. The purpose of securitizing collateral debt obligations was to
16 provide a large supply of money for the lenders for originating loans, and to
17 provide investments to bond holders - which were expected to be relatively safe.

18 18. The formation of a proper and compliant Securitized Trust requires that
19 the Trust to be Governed by (1) the Pooling and Servicing Agreement; (2) the
20 Mortgage and Loan Agreement; (3) the 424(b)(5) Prospectus; (4) the Common

21 ⁴ In 1995, JPMorgan created the Credit Debt Swap (CDS), essentially, a CDS is a form of
22 insurance intended to protect the buyer of the policy in the case the borrower defaults on the
23 loan. If the borrower defaults, the buyer of the CDS receives a large payout for the cash value of
24 the defaulted loan. The main difference between traditional insurance policy and a CDS is that
25 anyone can purchase a CDS; even those who have no direct "insurable interest" in the lender.
26 CDSs' were instrumental during the housing bubble because once the banks ran out of
27 creditworthy borrowers; they had to run to un-creditworthy subprime borrowers. To avoid losses
28 from defaults, the banks moved these risky mortgages off his books by bundling them into
"securities" and selling them to investors. The CDS market is the only major financial sector of
the market that is not governed by any rules, Due to the sector the estimated exposure to losses
is in the Trillions for the taxpayers.

⁵ The transfers of assets were only reflected on the Books (Ledgers) and no actual documents
were properly endorsed or assigned over to the Trustee of the Securitized Trust.

1 Law Trust rules of Delaware or New York, depending on its origin, and (5)
2 Internal Revenue Code section 860A through 860G better known as the Real
3 Estate Mortgage Investment Conduit (“REMIC”) rules.

4 19. An essential aspect of the mortgage securitization process is that the
5 Trust must obtain and maintain good title to the mortgage loans comprising the
6 pool for that certificate offering. This is necessary in order for the Trustee of the
7 purportedly Securitized Trust to be legally entitled to enforce the mortgage loans in
8 the case of default. In addition to other required documentation to complete the
9 Collateral File of any given loan, two documents relating to each mortgage loan
10 must be validly transferred to the Trust as part of the securitization process - the
11 (*Promissory Note*) and the security instrument (*Deed of Trust or Mortgage Note*).
12 In this case, on information and belief, neither document was validly transferred
13 within the required timelines as stipulated by the pooling and servicing agreement.

14 20. Here, Plaintiffs’ allege that the “true sale” never took place due to the
15 failure to follow the basic legal requirements for the transfer of a negotiable
16 instruments under the Rules Governing the Accounting for Transfers and Servicing
17 of Financial Assets and Extinguishments of Liabilities “FAS140” and thereby,
18 Defendant CitiMortgage, Inc did not acquire any legal, equitable, and pecuniary
19 interest in the Plaintiffs’ Note and Mortgage. As a result, therefore, CitiMortgage,
20 Inc which purports to be the Plaintiffs’ creditor, actually has no secured or
21 unsecured right, title, or interest in the Plaintiffs’ Note and Mortgage, and has no
22 right to collect mortgage payments, demand mortgage payments, or report
23 derogatorily items against the Plaintiffs’ credit⁶, or to default the Plaintiffs.

24 ⁶ Plaintiffs’ allegations are supported by the recent ruling of the Massachusetts Supreme Judicial
25 Court in *U.S. Bank vs. Ibanez*, *SJC-10694*, 2011 WL 38071. In *Ibanez*, the court invalidated two
26 foreclosure sales, finding that the lower court did not err in concluding that the securitization
27 documents submitted by U.S. Bank and Wells Fargo failed to demonstrate that they were the
28 holders of the mortgages. The court rejected the banks argument that the mortgages were
transferred via the applicable Pooling and Servicing Agreement and made clear that, to foreclose,
the banks must prove a complete and unbroken chain of title from origination to securitization
trust in full compliance of the PSA, i.e. establish ownership of the mortgage.

1 Furthermore; the FAS-140 rules are used by the United States Treasury as to the
2 evaluation and extinguishment of the Troubled Assets as set forth in the Economic
3 Stabilization Act of 2008 under [12 U.S.C. § 5201 ET SEQ.] ; as such the
4 importance of complying with such procedure is essential.

5 21. The Plaintiffs further allege that, on information and belief, that
6 CitiMortgage, Inc cannot act as a Collector, Servicer, Creditor or Beneficiary as
7 the Trust that purportedly contained the Certificates “Aegis Asset Backed
8 Securities Trust 2006-1, Mortgage Backed Notes” was dissolved and terminated
9 due to the *Economic Stabilization Act of 2008* Under [12 U.S.C. § 5201 ET SEQ.]
10 and the purported “*Corporate Assignment of the Deed of Trust*” is a fabrication of
11 a false document by Defendant CitiMortgage, Inc to collect subrogation payments
12 from the Troubled Asset Relief Program (hereafter; TARP). The actions of the
13 Defendants CitiMortgage, Inc and their agents representing themselves to be
14 employees of MERS and legitimate witnesses for the purported “Corporate
15 Assignment of Deed of Trust” are fraudulent.

16 22. Despite the procedural requirements and the rules governing the proper
17 accounting procedures governing the Accounting for Transfers and Servicing of
18 Financial Assets and Extinguishments of Liabilities “FAS-140” and Federal and
19 State laws overseeing the compliance of such transactions, the Defendants attempt
20 to take advantage of the complex structured financial system to defraud the
21 Plaintiffs as they have done with millions of other homeowners from the inception
22 of the meltdown. Plaintiffs anticipate that the Defendants and their counsel will
23 seek a Court-sanctioned bailout by submitting a blatantly fabricated “Assignment”
24 or a copy of the Deed of Trust and the Note that does not reflect any information or
25 proof that the Defendants are the true “Assignees” or “Beneficiaries” via a Request
26 for Judicial Notice, thereby committing fraud on the court, and attempting to
27 further mislead Plaintiffs that the Defendants CitiMortgage, Inc and Quality Loan
28

1 Service Corporation are actual creditors, and are entitled to enforce their alleged
2 obligation.

3 23. The Plaintiffs do not dispute that they owe an amount on their alleged
4 mortgage obligation⁷. Rather, Plaintiffs dispute the Defendants claims as to
5 having the legal right and the ownership interest that has been disclosed and
6 contradicted by the Defendant CitiMortgage, Inc on multiple occasions as to the
7 purported Debt and Mortgage "the Loan", and seek the Court's assistance in
8 determining who the holder in due course is of their alleged Note and alleged Deed
9 of Trust, and specifically what rights, if any, the Defendants have to claim a
10 secured or unsecured interest in the Plaintiffs' alleged Note or alleged Mortgage
11 "the Loan".

12 24. The Plaintiffs' information and belief is based on (1) Detailed analysis
13 of the property's title records; (2) The analysis of the mortgage documents on
14 record and with escrow; (3) The detailed study and review of the ***Economic***
15 ***Stabilization Act of 2008*** passed by Congress; (4) The Plaintiffs have also
16 conducted detailed study of the ongoing events with respect to "*Legacy Assets*",
17 "*Legacy Securitization Program*", "*Legacy Loan Programs*" and other offerings
18 by the respective governing agencies to entities such as the Defendants
19 CitiMortgage, Inc (The collectors of the alleged debt); (5) an audit of filings with
20 the Securities and Exchange Commission ("SEC"), including the Trust's 424(b)(5)
21 Prospectus and the Pooling and Servicing Agreement ("PSA"); (6) CitiMortgage,
22 Inc balance sheet and other collateral filed with the SEC as a public company and
23 the FDIC.

24 25. The Plaintiffs' are informed and allege that the Defendants have
25 assumed the alleged debt from parties unknown at this time through a "*credit sale*"

26 ⁷ However, simply because Plaintiffs do not dispute the fact, the court should not condone
27 CitiMortgage, Inc; and Quality Loan Service Corporations' fraudulent behavior and predatory
28 mortgage collection practices and allow it to collect on money it was not owed. Simply put, the
court should not allow the defendants to trample over 200 years of well-settled property laws just
because they "owe somebody money."

1 transaction utilizing their credit as collateral⁸. The Defendants are debt collectors
 2 under the meaning of "*Debt Collector*" as stipulated by the "F.D.C.P.A" 15 U.S.C.
 3 § 1692 (a) (6); the Defendants are not the originators of the alleged debt; the
 4 Defendants also fall within the meaning of the "F.D.C.P.A" collecting alleged
 5 debts at the time that the alleged debts were in default. In addition the Defendant
 6 does not show the purported debt on their balance sheet. This means that the
 7 Defendant CitiMortgage, Inc is collecting on behalf of another as a debt collector
 8 and not an Assignee; in addition the servicer cannot be treated as an Assignee of a
 9 debt when they are the Servicer of the alleged debt [see 15 U.S.C. § 1641 (f)(2)].

10 26. On or about October 11, 2006 the Plaintiffs executed a Note and
 11 Mortgage in favor of "Aegis Wholesale Corporation" a mortgage banker that
 12 conducted financing of residential properties, (hereafter "Aegis" obtaining an
 13 alleged loan on the property located at 13024 Malvasia Way, Rancho Cucamonga,
 14 CA 91739; MERS was named on the Deed of Trust as the purported "*nominee*"
 15 and "*beneficiary*" of the Deed of Trust.

16 27. The Plaintiffs are informed and allege that "Aegis" never sold,
 17 transferred, assigned or granted their Note or Mortgage to the sponsor, depositor;
 18 the Defendants are merely third - party strangers to the alleged debt "the Loan"
 19 transaction. Furthermore, Plaintiffs allege that none of the Defendants or Doe
 20 Defendants can demonstrate or document that Plaintiffs' Note was ever endorsed,
 21 assigned or/and transferred to CitiMortgage, Inc. In fact, Plaintiffs have requested
 22 for the Defendants CitiMortgage, Inc and Quality to verify and validate their debt.
 23 Although the information should be readily available to any mortgage servicer,
 24 CitiMortgage, Inc and Quality have failed to provide any evidence to verify the
 25

26
 27 ⁸ "It has been settled beyond controversy that a national bank, under Federal Law, being limited
 28 in its power and capacity, cannot lend its credit by nor guarantee the debt of another. All such
 contracts being entered into by its officers are ultra vires and not binding upon the corporation."
 It is unlawful for banks to loan his deposits

1 owner and amount of the Plaintiffs' Mortgage or validate the claim to the
2 Plaintiffs' debt obligation.

3 28. The Plaintiffs allege that the parties involved in the alleged
4 securitization and alleged transfer of the Plaintiffs' Note and Mortgage failed to
5 adhere to section 2.01 of the PSA, which requires that Plaintiffs' Note and
6 Mortgage be properly endorsed, transferred, accepted, and deposited with the
7 Securitized Trust (or its custodian) on or before the "*Closing Date*" indicated on
8 the Prospectus ; the "*Closing Date*" is the date by which all the Notes and
9 Mortgages must be transferred into the "Common Law Trust". The failure to do so
10 results in the Note and Mortgage not being part the "Common Law Trust", such
11 that is not a loan that either CitiMortgage, Inc or Quality can attempt to collect on.

12 29. On or about March 23, 2012, "Derrick White", purportedly the alleged
13 "Assistant Secretary" for MERS, allegedly executed a document purporting to be
14 an "Corporate Assignment of the Deed of Trust" ("hereafter, Assignment"), in
15 which he intentionally misrepresented to the Plaintiffs in writing that
16 CitiMortgage, Inc has acquired the interest in the Plaintiffs' Note and Mortgage,
17 and that MERS has endorsed, transferred, and negotiated the Plaintiffs' Note to
18 Defendant "*For Good and Valuable Consideration*". In fact, no such transfer of
19 interest took place, a fact that "Derrick White", CitiMortgage, Inc and Quality
20 were/are aware of (See Exhibit A), attached hereto is a true and correct copy of the
21 Assignment, executed on 03/23/2012. **Plaintiffs specifically dispute the contents**
22 **and the authenticity of the document.**

23 30. On or about March 23, 2012, "Tammi Mylek Williams", purportedly the
24 alleged "Notary Public" witnessed the purported "Assistant Secretary, Derrick
25 White" executing the alleged "Assignment" from MERS to "CitiMortgage, Inc".
26 In fact, no such transfer of interest took place, a fact that "Tammi Mylek
27 Williams", CitiMortgage, Inc and Quality were/are aware of (See Exhibit A),
28 attached hereto is a true and correct copy of the Assignment, executed on

1 03/23/2012. **Plaintiffs specifically dispute the contents and the authenticity of**
2 **the document.**

3 31. The Plaintiffs allege that the "Assignment" that was executed after the
4 closing date of the trust; The dubious "Assignment" raises numerous red flags and
5 further demonstrates that the Plaintiffs' Note and Mortgage were not deposited into
6 the Trust by the closing date, and that the "Assignment" was fabricated in attempt
7 to "paper over" the fatal securitization defects by individuals that commit these
8 acts as a daily regimen. The acts perpetrated by the individuals acting as a
9 "Assistant Secretary of MERS" and the "Public Notary" as the purported witness
10 of the State was caused by the Defendant CitiMortgage, Inc as part of a scheme to
11 defraud the United States Treasury and the Plaintiffs by foreclosing and collecting
12 TARP funds as an assigned agent of the Department of Treasury pursuant to 12
13 U.S.C. §5211(c)(2)(3).

14 32. The failure to deposit Plaintiffs' Note into the "Common Law Trust"
15 before the closing date is a violation of the PSA and New York Trust Law.
16 Consequently, the "Common Law Trust" and the purported trustee at the time
17 which the Trust existed cannot claim any legal or equitable right, title, or interest in
18 the Plaintiffs' Note and Mortgage; In addition CitiMortgage, Inc and/or Quality as
19 a Trustee, Collector, Servicer, Assignee, or alleged Beneficiary cannot take any
20 action which is not authorized by the Securitization Agreements that created and
21 govern the "Common Law Trust".

22 33. The Plaintiffs' do not allege or assert that they are the beneficiary or
23 party to the PSA. Rather, Plaintiffs allege that the failure to securitize their Note
24 and the subsequent fraudulent "Assignment" makes it impossible for CitiMortgage,
25 Inc or "Common Law Trust" to claim, allege or assert that it was assigned,
26 transferred or granted Plaintiffs' Note or Mortgage, or any interest therein, in any
27 manner whatsoever. Plaintiffs also allege that the failure to securitize their Note
28

1 and Mortgage has resulted in an unperfected lien that defendants cannot enforce in
2 any manner whatsoever⁹.

3 34. The Plaintiffs in good faith relied on CitiMortgage, Inc representations
4 and have been damaged in the following ways: (1) the Plaintiffs in good faith
5 relied on the representations made by CitiMortgage, Inc employees and team
6 members and became delinquent on their mortgage in order to be assisted for a
7 loan modification as told by the customer representative and have lost multiple
8 credit lines and have incurred delinquencies on their credit report; (2) the Plaintiffs
9 in good faith relied on Defendants CitiMortgage, Inc representations as being the
10 purported Creditor, Owner, Servicer, or Beneficiary and entered into a contract for
11 Loan Modification that was soon after breached by the Defendant Chase in an
12 attempt to redirect funds into accounts that were not part of the alleged Loan
13 Servicing System; (3) the Plaintiffs in good faith relied on the representations of
14 the Defendants CitiMortgage, Inc and entered into an agreement for Loan
15 Modification that was intentionally breached so that the Defendant could illegally
16 foreclose on the Plaintiffs' property in order to collect *TARP* funds pursuant and in
17 violation of [12 U.S.C.§5211(e)] in order to be unjustly enriched; (4) multiple
18 parties may seek to enforce their alleged debt obligation against theirs; (5) the
19 title to the Plaintiffs' home has been clouded and rendered unmarketable (unless
20 more fraudulent actions are taken to show the foreclosure proceedings as proper
21

22 ⁹ These allegations are identical to those brought by the Nevada Attorney General against Bank
23 of America, CITIMORTGAGE, INC Home Loan Servicing, and QUALITY LOAN SERVICE
24 CORPORATION, in which Attorney General Catharine Cortez Masto alleges that these entities
25 engaged in unlawful and deceptive practices by misrepresenting to homeowners that they had the
26 authority to foreclose despite the fact that these were fatal deficiencies in transfers to the
27 securitization Trusts, State of *Nevada vs. Bank of America et al.*, No.3:11-ev-00135-RJD,(C.D.
28 New August 30, 2011). The AG concludes that, "[t]hese are mere technicalities. The PSA's
spelled out specific procedures in order to ensure a proper transfer, protect the Trusts as the
holders in due course, and avoid subjecting the Trusts to taxation. In addition, borrowers need to
know the actual holders of his mortgages so that, for example, they can investigate and assert
available defenses in foreclosures, including that the agent of the trustee lacks authority or
standing under the Note." *Id* at ¶ 146.

1 and legal), as any would be buyer of the Plaintiffs' property will find themselves
2 in legal limbo, unable to know with any certainty whether they can safely buy the
3 Plaintiffs property or get title insurance; (6) the Plaintiffs have paid fees in
4 amounts unknown to the wrong party and other payments for an undetermined
5 amount of time and overpaid in interest that was over calculated; (7) the
6 Plaintiffs are unable to determine whether they sent their monthly mortgage
7 payments to the right party; (8) their credit worthiness has been destroyed due to
8 the Defendants misreporting of alleged debts being delinquent without proper
9 standing; (9) the Plaintiffs have expended significant funds to cover the cost
10 associated with processes involved, credit lines closed, legal fees and other fees
11 paid to the wrong parties.

12 35. In addition to seeking compensatory, consequential, punitive, and other
13 damages, Plaintiffs' seek Declaratory Relief as to the capacity of the Defendant to
14 enter and execute contracts and whether the Deed of Trust (Mortgage) secures any,
15 obligation of the Plaintiffs' in favor of Defendants CitiMortgage, Inc or Quality
16 such that any of them can collect Plaintiffs' mortgage payments, demand payment
17 or engage in debt collection activities.

18 **V: MERS ROLE IN THE SECURITIZATION**
19 **AND ITS EFFECT ON THE CHAIN OF TITLE TO**
20 **THE PLAINTIFFS' PROPERTY**

21 36. Mortgage Electronic Registration Systems, Inc. ("MERS") is a private
22 corporation that administrates the MERS system, a national electronic registry
23 system that purports to track the transfer of ownership interests and servicing rights
24 in mortgage loans, including the Plaintiffs "alleged debt" loan. In 1993, the MERS
25 system was created by several large lenders; eventually other mortgage banking
26 entities became members. Members subscribe to the MERS system and pay an
27 annual fee for the electronic processing and tracking of ownership and transfers of
28 mortgages. Members contractually agree to appoint MERS as their common agent

1 on all mortgages they register in the MERS system. In essence, MERS privatized
 2 the mortgage recording system, creating a situation where in a borrower can no
 3 longer go to the Office of the County Recorder and determine who their lender
 4 actually is at any given point in time. Coincidentally, the formation of MERS
 5 corresponds with the period of time which the Glass-Steagall Act was enacted to
 6 regulate the FDIC and Banking and the repeal of the act in 1999, and the
 7 introduction of another bill known as the Gramm-Leach- Bliley Act; the golden
 8 age of securitization had started.

9 37. MERS is listed as grantee in the official records at the County Register
 10 of Deeds Offices. The lenders were supposed to retain the interest in the
 11 Promissory Notes, as well as the servicing rights to the mortgages, not MERS.

12 38. The operative document defining MERS and its rights and functions is
 13 the Deed of Trust (“Deed of Trust” or “Trust Deed”). The Deed of Trust conveys a
 14 security interest and power of sale in the real property “real estate” to the lender
 15 only, not MERS¹⁰.

16 39. The Plaintiffs allege that MERS is merely an electronic registration
 17 system and not a true beneficiary, and did not grant, assign, or transfer any true or
 18 pecuniary beneficial interest in the Plaintiffs’ Note and Mortgage. Contrary to the
 19 recitations contained in the “Assignment(s)” purportedly executed on March 23,
 20 2012, the “Corporate Assignment of Deed of Trust”; (1) MERS did not receive
 21 any value or consideration for the Plaintiffs’ Note and Mortgage; (2) MERS did
 22 not “grant, assign, or transfer” any interest in the Plaintiffs’ Note and Mortgage;
 23 and (3) “Derrick White” the purported signatory of the purported “ Corporate
 24 Assignment of Deed of Trust” (Exhibit A), was not the “Assistant Secretary for
 25

26 ¹⁰ This Security Instrument secures to the Lender: (i) the repayment of the Loan, and all renewals,
 27 extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and
 28 agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants,
 conveys and warrants to Trustee, in trust, with power of sale, the following described property located in
 the County of Orange: [legal description of the property] Deed of Trust ¶ R.

1 MERS” at any time and lacked the requisite corporate and legal authority to effect
 2 an actual “Assignment” of the Plaintiffs’ Note and Mortgage (assuming that MERS
 3 had any legal, equitable, or pecuniary interest in the Plaintiffs’ Note and Mortgage,
 4 which the Plaintiffs assert and claim it does/did not have.

5 40. The Plaintiffs are informed and allege that MERS own membership
 6 rules directly prohibit the company from ever claiming ownership of any
 7 mortgages or negotiable instruments, including the mortgage for the Plaintiffs¹¹
 8 (Exhibit B). In fact, in a September 2009 deposition, former President of MERS,
 9 R.K. Arnold admitted that MERS does not have a beneficial interest in any
 10 mortgage, that it does not loan money, and that it does not suffer a default if a
 11 borrower fails to repay a mortgage loan¹². Therefore, MERS does not own the
 12 Plaintiffs Note and Mortgage, and did not “grant, assign, or transfer” any interest
 13 therein to Defendants CitiMortgage, Inc or any other Doc defendants at any time.
 14 Furthermore the alleged assignment that has been recorded to CitiMortgage, Inc on
 15 March 26, 2012 could have never actually happened before or there-after.

16 41. The Plaintiffs are informed and allege that the purported “Corporate
 17 Assignment” of the Plaintiffs’ Note and Mortgage to CitiMortgage, Inc is a
 18 fraudulent lien claim and in direct contravention of the laws and customs of
 19 California.¹³

21 ¹¹ A successor-in-interest to the beneficial interest in the trust Deed may choose to engage MERS as its
 22 agent by execution of a subsequent agreement, but MERS and its members cannot force MERS upon all
 23 future purchasers simply by claiming such authority in the original deed of trust.

24 ¹² See Video Deposition of R.K. Arnold, *Henderson v. MERSCORP, Inc*, Civil Action No. CV-08-
 25 900805 (Ala. Cir. Sept.25, 2009) available at (<http://www.stopforeclosurefraud.com/2010/05/29/full-deposition-of-mortgage-electronic-registration-systems-mers-president-cco-r-k-arnold-merscorp/>).

26 ¹³ “Whatever ‘necessary to comply with law or custom’ means, and there is no evidence in the record to
 27 explain it, it should not mean that U.S. Bank or MERS’ can contract away their obligations to comply
 28 with foreclosure statutes.” *In re Salazar*, 448 B.R. 814,823 (finding that the MERS system is not an
 alternative to statutory foreclosure laws, which “must be respected.” and affirming that “[t]her court
 ...joins the courts on other states that have rejected MERS’ offer of an alternative to the public recording
 system.”) *Id.* at 824

1 42. Therefore, based on the foregoing, MERS did not, *in fact*, assign any
 2 interest to CitiMortgage, Inc, such that CitiMortgage, Inc can demand mortgage
 3 payments or report the Plaintiffs' payments as delinquent or attempt to foreclose
 4 on the property.

5 **VI: THE FABRICATED ASSIGNMENT OF DEED OF TRUST**
 6 **IS A FRAUDULENT LIEN THAT CONVEYED**
 7 **NO INTEREST TO CITIMORTGAGE, INC**

8 43. On March 26, 2012, CitiMortgage, Inc caused the "Corporate
 9 Assignment of Deed of Trust" to be recorded with the San Bernardino County
 10 Recorder's Office. The "Assignment" alleged "**For Good and Valuable**
 11 **Consideration**" MERS granted, assigned, and transferred to CitiMortgage, Inc all
 12 beneficial interest in the Deed of Trust. The "Corporate Assignment of Deed of
 13 Trust" was purportedly signed by "Derrick White" as the alleged "Assistant
 14 Secretary" of MERS. The Plaintiffs allege that no such transfer ever occurred and
 15 that "Derrick White" is not an "Assistant Secretary" of MERS.

16 44. The Plaintiffs are informed and allege that "Derrick White" is an
 17 individual who simply signs thousands of property record documents without any
 18 legal or corporate authority whatsoever.

19 45. In fact, the alleged "Assignment" was fraudulently executed without
 20 MERS or Aegis's knowledge or authorization.

21 46. The alleged Assistant Secretary for MERS "Derrick White" was never,
 22 in any manner whatsoever, appointed as an "Assistant Secretary" by the Board of
 23 Directors of MERS, as required by MERS Corporate By-Laws and adopted
 24 Corporate Resolution by the Board of Directors of MERS. For that reason, the
 25 individual acting as the alleged "Assistant Secretary of MERS" never had, nor has,
 26 any corporate or legal authority from MERS, or the lender's successors and
 27
 28

1 assigns, to execute the purported "Assignment."¹⁴ This was an intentional act
 2 undertaken by the Defendants CitiMortgage, Inc done knowingly with specific
 3 intent that the consequences of their actions be brought to fruition, which they have
 4 as evidenced by the instant debt collection activities.

5 47. The "Assignment" is a fraudulent lien claim, and the execution, filing,
 6 and recordation of the document was created for the purpose of facilitating and
 7 aiding and abetting the illegal, deceptive, and unlawful collection of the Plaintiffs'
 8 mortgage payments, as well as engaging in other wrongful debt collection
 9 activities.

10 48. The Plaintiffs allege that any amounts allegedly owed under the Note is
 11 subject to equitable offset by the actual, consequential, special, and punitive
 12 damages owed to the Plaintiffs from Defendants, which amount is currently
 13 unknown, but will be determined upon conducting discovery. Plaintiffs believe
 14 that this amount will be in excess of the amount of their alleged obligation.

15 49. The Defendants' attempt to assign or transfer a Deed of Trust by itself,
 16 does not allow enforcement of Plaintiffs' Note and Mortgage. As alleged in this
 17 complaint herein, Plaintiffs' Note and Mortgage were not properly negotiated,
 18 endorsed, and transferred to Defendants CitiMortgage, Inc who seeks to cause its
 19 purported authorized agent(s) Defendants CitiMortgage, Inc. and/or Quality to
 20 collect mortgage payments and engage in other unlawful collection practices.

21 50. California Commercial Code section 3301 limits a negotiable
 22 instrument's enforcement to the following:

23 "Person entitled to enforce" an instrument
 24 means(a)the holder of the instrument,(b) a

25 ¹⁴ The instant case is analogous to *Kingman holdings, LLC v. Citimortgage, Inc. and Mortgage*
 26 *Electronic Registration Systems, Inc.*, WL 1883829 (E.D Tex. 2011)("Kingman"), where the court denied
 27 a motion to dismiss with similar causes of action as those that are pled here on the basis that the Plaintiffs
 28 had adequately challenged the signatory's alleged title as "Vice President" of MERS. The *Kingman* court
 held that the Plaintiffs had adequately pled that the assignment executed by Nate Blackstun as "Vice
 President" on behalf of MERS, was void because Blackstun was not actually appointed by MERS to be its
 Vice President.

nonholder in possession of the instrument who has the rights of a holder, or (c) a person not in possession of the instrument who is entitled to enforce the instruments pursuant to Section 3309 or subdivision (d) of Section 3418. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

51. The Plaintiffs are informed and believe and allege that none of the Defendant's were/are present holders in due course of the Plaintiffs' Note such that they can enforce Plaintiffs' obligation and demand mortgage payments.

52. The Plaintiffs are informed and believe and allege that the Defendant's were not, and are not, a nonholder in possession of the Plaintiffs' Note who has rights of the holder.

53. If there is a holder due in course of Plaintiffs' Note at issue, pursuant to California Commercial Code section 3301, et seq, and/or the PSA, it is the entity that can establish a pecuniary, legal, and equitable interest in the property, and provide an unbroken chain of title to Plaintiffs Note and Mortgage.¹⁵

¹⁵ The testimony of Linda DeMartini, a 10-year litigation manager for Countrywide, in *In Re Kemp*, Case No. 08-18700-JHW, (Bankr. D. N.J. November 16, 2010)(for publication) exposed the shoddy handling of mortgage notes and deeds of trust of securitized mortgages required to perfect "holder in due course" status. In that case Linda DeMartini described how Countrywide failed to adhere to the most rudimentary of securitization procedures, such as transferring the original promissory note to the trusts that had purchased the loans, as required under the pooling and servicing agreement. Ms. DeMartini testified that it was standard practice for Countrywide to warehouse the original mortgage notes, which were stored in Simi Valley, California, despite securitization contracts that required the notes to be physically transferred to sponsors, trustee or custodians of the securitized trusts. The findings in court decisions all over the country, news stories, attorneys generals' complaints, and state and federal investigations reveal that business practices like Countrywide's were common place and, like Countrywide, most lenders failed to properly comply with protocols required to properly securitize mortgage loans. Ms. DeMartini's testimony has been corroborated by Abigail Field of CNN, who reviewed foreclosures filed in two New York counties between 2006 and 2010 in which Bank of New York was foreclosing on behalf of a Countrywide securitization trust, and found that none of the 104 loans that were examined were endorsed by Countrywide: " ..If the lack of endorsements on these notes is typical- and 104 out of 104 suggests it is - the problem occurs across Countrywide securities." *See* Abigail Field, *At Bank of America, More Incomplete Mortgage Docs raises More Questions*, Fort., (June 3, 2011).

1 54. On information and belief, none of the Defendant's were/are entitled to
2 enforce the Plaintiffs Note pursuant to § 3309 or subdivision (d) of § 3418

3 55. The Plaintiffs' allege that, prior to demanding mortgage payments from
4 the Plaintiffs, none of the Defendants had, nor presently have, secured or
5 unsecured legal, equitable, or pecuniary interest in Plaintiffs' Note and/or Deed of
6 Trust as required under California Law - irrespective of who is actually in physical
7 possession of Plaintiffs' Note.

8 56. The Plaintiffs allege that, on information and belief, CitiMortgage, Inc,
9 and/or its agents are fraudulently enforcing an alleged debt obligation in which
10 they have no pecuniary, equitable or legal interest. Thus, the Defendants
11 CitiMortgage, Inc and/or Quality conduct is part of a fraudulent debt collection
12 scheme.

13 **VII: PLAINTIFFS HAVE SUFFERED, AND CONTINUE TO**
14 **SUFFER, SIGNIFICANT MONETARY, LEGAL**
15 **AND EQUITABLE DAMAGES**

16 57. The conduct described above by CitiMortgage, Inc; is/was malicious
17 because Defendants knew that they were not acting on behalf of the current
18 pecuniary beneficiary of the Note and Mortgage. However, despite such
19 knowledge, said Defendants continued to demand and collect Plaintiffs mortgage
20 payments.

21 58. The Defendants engaged and are engaging in a pattern of defrauding the
22 Plaintiffs, in that, on information and belief, during the entire life of the mortgage
23 loan, Defendants failed to properly credit payments made, incorrectly calculated
24 interest on the accounts, and failed to accurately debit fees.

25 59. On information and belief, at all times material, CitiMortgage, Inc has
26 had and has knowledge that Plaintiffs' accounts were not accurate, but that
27

28 <http://finance.fortune.cnn.com/2011/06/03/at-bank-of-america-moreincomplete-mortgage-docs-and-more-questions/>.

1 Plaintiffs would continue to make further payments based on Defendants
2 inaccurate accounts.

3 60. On information and belief, Plaintiffs made payments based on the
4 improper, inaccurate, and fraudulent representations as to Plaintiffs' accounts.

5 61. As a direct and proximate result of the actions of the Defendants set
6 forth above, Plaintiffs overpaid in interest.

7 62. As a direct and proximate result of the actions of the Defendants set
8 forth above, Plaintiffs' credit and credit score have been severely damaged.
9 Specifically, because of the derogatory credit reporting on their credit report by
10 CitiMortgage, Inc Plaintiffs are unable to make use of their credit worthiness and
11 to obtain any credit.

12 63. As a direct and proximate result of the actions of the Defendants set
13 forth above, the title to the Plaintiffs' property has been slandered, clouded, and its
14 sale ability has been rendered unmarketable.

15 64. As a direct and proximate result of the actions of the Defendants set
16 forth above, Plaintiffs do not know who the current beneficiary of their alleged
17 Note and Mortgage actually is, such that they are now subject to "Double Financial
18 Jeopardy".

19 65. As a direct and proximate result of the actions of the Defendants set
20 forth above, *multiple* parties can attempt to enforce Plaintiffs' alleged debt
21 obligations.

22 66. The conduct of CitiMortgage, Inc and one or more of the Doe
23 Defendants has led to the imminent loss of Plaintiffs' real property and pecuniary
24 damages. The pecuniary damages include, but are not limited to, the cost of over
25 calculation and overpayment of interest, the cost of repairing Plaintiffs' credit, the
26 reduction and/or elimination of Plaintiffs' credit limits, the cost associated with
27 removing the cloud from their property title and attorney's fees, in an amount to be
28 proven at trial.

67. The conduct of CitiMortgage, Inc, and one or more of the Doe Defendants' conduct was malicious because Defendants did not know the identity of the current and true beneficiary of Plaintiffs' Note and Deed of Trust, yet they intentionally and fraudulently covered up this defect by wrongfully recording a fraudulent "Assignment", which would be enable them to *illegally and fraudulently* collect on Plaintiffs debt, and which in essence has rendered the title the property unmarketable.

68. The title to Plaintiffs property has been rendered unmarketable and unsalable because of the possibility of multiple claims made against Plaintiffs alleged debt obligation and the underlying security (the subject property). If the "Corporate Assignment of the Deed of Trust" is not cancelled and set aside, Plaintiffs will be incurably prejudiced. Plaintiffs will be denied the opportunity to identify and negotiate with their *true creditor* and exercise their right to verify and validate their alleged debt.

69. The Plaintiffs have offered to and are ready, willing, and able to unconditionally tender to their alleged obligation¹⁶.

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¹⁶ Case law makes it clear that Plaintiffs is only required to allege a credible offer of tender, not actually tender. *Alicia v. GE Money Bank*, No C 09-00091 SBA, 2009 WL 2136969 at *3 (N.D. Cal. July 16, 2009) (...debtor must allege a credible tender of the amount of the secured debt...). Moreover, tender is *not* required when the owner's action attacks the validity of the underlying debt because the tender would constitute an affirmation of the debt. *Sacchi v. Mortgage Electronic Registration Systems, Inc.* No. CV 11-1658 AHM, 2011 WL 25330299 (C.D. Cal June 24, 2011), at *16 (emphasis added)(citing *Onofrio v. Rice*, 55 Cal. App. 4th 413, 424, (1997); *Stockton v. Newman*, 148 Cal. App. 2d 558, 564 (1957). *See also*, *Foulkord v. Wells Fargo Financial California Inc.*, No. CV 11-732-GHK (AJWx) (C.D. Cal May 31, 2011)("...requiring Plaintiffs to tender the amount due on her loan at this time would be illogical and inequitable given that he disputes that Wells Fargo has any rights under the loan.") In light of the fact that Plaintiffs contents the legitimacy of the Defendants' claim to the mortgage payments, it would be *illogical and inequitable* to require Plaintiffs to actually tender the amount given that Plaintiffs disputes whether Defendants have any rights under the loan. *See Onofrio v. Rice*, 55 Cal. App. 4th 413, 424 (1997).

FIRST CAUSE OF ACTION - DECLARATORY RELIEF:
TO DETERMINE STATUS OF DEFENDANTS' CLAIM

[28 U.S.C. §§ 2201, 2202]

[Against All Defendants and Doe Defendants]

70. The Plaintiffs hereby incorporate by reference each and every one of the preceding paragraphs as if the same were fully set forth herein.

71. Section 2201(a) of Title 28 of the United States Code states:

In case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether, or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

72. Section 2202 of Title 28 of the United States Code states:

Further necessary or proper relief based on declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

73. Plaintiffs allege that CitiMortgage, Inc does not have a secured or unsecured legal, equitable, or pecuniary interest in the lien evidenced by the Deed of Trust and that its purported assignments have no value since the Deed of Trust is wholly unsecured.

74. On or about October 11, 2006, the Defendants claim they had secured enforceable interest in, and perfected lien against, the Plaintiffs' Note, Deed of Trust and Property.

1 75. Thus, the competing allegations made by Plaintiffs above, establish that
2 a real and actual controversy exists as to the respective rights of the parties to this
3 matter, including ownership of the property.

4 76. Accordingly, Plaintiffs request that the Court make a finding and issue
5 appropriate orders stating the none of the named Defendants or Doe Defendants,
6 have any right or interest in Plaintiffs' Note, Deed of Trust, Property which
7 authorizes them, in fact or as a matter of law, to collect Plaintiffs' mortgage
8 payments or enforce the terms of the alleged Note or Deed of Trust in any manner
9 whatsoever.

10 77. The Plaintiffs will suffer prejudice if the Court does not determine the
11 rights and obligations of the parties because; (1) Plaintiffs will be denied the
12 opportunity to identify their true and current creditor/lender and to negotiate with
13 them; (2) they will be denied the right to conduct discovery and have
14 CitiMortgage, Inc and other defendants' claims verified by a custodian of records
15 who has personal knowledge of the loan and all transactions related to it; and (3)
16 they will be denied the opportunity to discover the true amount they still owe
17 minus any legal costs, fees and charges.

18 78. Due to the actual case and controversy regarding competing claims and
19 the allegations, it is necessary that the court declare the actual rights and
20 obligations of the parties and make a determination as to whether CitiMortgage,
21 Inc and other Defendants claims against the Plaintiffs is enforceable and whether it
22 is secured or unsecured by any right, title, or interest in Plaintiffs' property.

23 79. Furthermore, the conduct of CitiMortgage, Inc and Quality as their
24 agent, and one or more of the Doe Defendants, and each of them, as herein
25 described, has been so malicious and contemptible that it would be looked down
26 upon and despised by ordinary people. Plaintiffs are therefore entitled to punitive
27 damages in an amount appropriate to punish Defendants and to deter others from
28 engaging in similar conduct.

SECOND CAUSE OF ACTION - NEGLIGENCE

[Against All Defendants and Doe Defendants]

80. The Plaintiffs hereby incorporate by reference each and every one of the preceding paragraphs as if the same were fully set forth herein.

81. At all times relevant herein, Quality Loan Service Corporation was acting as a purported agent for CitiMortgage, Inc. Defendants are jointly and severally liable for CitiMortgage, Inc and/or Quality Loan Service Corporation's negligent and reckless conduct.

82. CitiMortgage, Inc as the purported beneficiary of the Note and Deed of Trust, has a duty to exercise reasonable care¹⁷ and skill to follow California Law with regard to enforcement of monetary obligations, and to refrain from taking or failing to take any action against Plaintiffs that they did not have the legal authority to do. This includes not collecting or demanding mortgage payments when they do not have the right to enforce the obligation, causing the Plaintiffs to overpay in interest, making derogatory credit reports to credit bureaus, and failing to keep an accurate accounting of Plaintiffs mortgage payments, credits, and debits (if CitiMortgage, Inc is in fact the legally authorized mortgage servicer for the Plaintiffs).

83. CitiMortgage, Inc has a duty to exercise reasonable care and skill to refrain from taking any action against Plaintiffs that they do not have the legal authority to do. As a direct and proximate result of the reckless negligence, utter carelessness, and blatant fraud of the Defendants as set forth above, the chain of title to Plaintiffs' property has been rendered unmarketable and fatally defective and has caused Plaintiffs to lose saleable title to the subject property.

¹⁷ Normally lenders and servicers do not owe a borrower a duty of care. *Nymark v. Heart Fed. Savings & Loan Assn.*, 231 Cal. App. 3d 1089, 1093 (1991). However, a bank may be liable in negligence if it fails to discharge its contractual duties with reasonable care. *Das v. Bank of Am*, 186 Cal. App.4th 727, 741 (2010). Additionally, a bank may be liable for aiding and abetting a tort when it renders "substantial assistance" to a tortfeasor during a business transaction that it knowingly aided in the commission of the tort. *Id.* (citing *Casey v. U.S. Bank Nat. Assn.*, 127 Cal. App. 4th 1138, 1144-45).

1 84. CitiMortgage, Inc breached that duty when they failed to follow the
2 guidelines established in the PSA requiring the transfer of the Note and Deed of
3 Trust into the “Aegis Asset Backed Securities Trust 2006-1, Mortgage Backed
4 Notes” by the closing date.

5 85. As a direct and proximate result of the negligence and carelessness of
6 the Defendants as set forth above, Plaintiffs have suffered, and continue to suffer,
7 general and special damages in an amount to be determined at trial, including
8 attorneys’ fees and costs of bringing suit to dispute, validate, and challenge said
9 Defendants purported rights to enforce the Plaintiffs’ alleged debt obligation.

10 **THIRD CAUSE OF ACTION - QUASI CONTRACT**

11 **[Against All Defendants and Doe Defendants]**

12 86. Plaintiffs hereby incorporate by reference each and every one of the
13 preceding paragraphs as if the same were fully set forth herein.

14 87. CitiMortgage, Inc, demanded monthly mortgage payments from
15 Plaintiffs and continued to collect payments from Plaintiffs. Plaintiffs reasonably
16 relied upon CitiMortgage, Inc assertion that it/they are/were entitled to the benefit
17 of Plaintiffs’ mortgage payments.

18 88. CitiMortgage, Inc knowingly accepted payments and retained them for
19 its own use knowing that CitiMortgage, Inc did not acquire an interest in Plaintiffs’
20 Note, such that they could accept or keep Plaintiffs’ payments. It would be
21 inequitable for CitiMortgage, Inc to retain the payments it received from Plaintiffs
22 which it did not have legal authority to collect. The equitable remedy of restitution
23 when unjust enrichment has occurred is an obligation created by the law without
24 regard to the intention of the parties, and is designed to restore the aggrieved party
25 to their former position by return of the thing or its equivalent in money.

26 89. Section 23 of the Deed of Trust states that: “Upon payment of all the
27 sums secured by this Security Instrument, Lender shall request Trustee to re-
28 convey the Property and shall surrender this Security Instrument and all notes

1 evidencing debt secured by this Security Instrument to Trustee. "Trustee shall re-
2 convey the Property without warranty to the person or persons legally entitled to
3 it." The obligations to Aegis Wholesale Corporation under the Deed of Trust were
4 fulfilled when Aegis Wholesale Corporation received the balance on the Note as
5 proceeds of sale of Plaintiffs' Note and Mortgage to a presently unknown entity.
6 CitiMortgage, Inc has been unjustly enriched by collecting monthly payments from
7 Plaintiffs when it has no interest in her Note.

8 90. Plaintiffs seek restitution for any payments they made to CitiMortgage,
9 Inc that were not paid to the lender or beneficiary, if any.

10 **FOURTH CAUSE OF ACTION**

11 **VIOLATION OF 12 U.S.C. § 2605 (RESPA)**

12 **[Against CitiMortgage, Inc and Doe Defendants]**

13 91. Plaintiffs hereby incorporate by reference each and every one of the
14 preceding paragraphs as if the same were fully set forth herein.

15 92. The subject loan is a federally regulated mortgage loan and is subject to
16 the federal Real Estate Procedures Act (RESPA) and its implementing regulation,
17 Regulation X.

18 93. On or about February 2012, Plaintiffs sent a Qualified Written Requests
19 to Defendant CitiMortgage, Inc a ("QWR").

20 94. On information and belief CitiMortgage, Inc received QWR on or about
21 February 2012.

22 95. The QWR contained information to enable CitiMortgage, Inc to identify
23 Plaintiffs' loan and also contained requests for information of the loan, specifically
24 the identity and contact information of the holder in due course of Plaintiffs' Note,
25 accumulated late fees and charges, and requested information to verify the validity
26 of the purported debt owed to CitiMortgage, Inc.

27 96. CitiMortgage, Inc did not provide the contact information for the
28 purported holder of the Plaintiffs' Note, as required by 12 U.S.C. § 2605, et seq.

1 Instead, CitiMortgage, Inc responded by providing a partial account history of
2 Plaintiffs' account. CitiMortgage, Inc responses did not respond to Plaintiffs'
3 request and did not comply with the requirements of 12 U.S.C. § 2605, et seq.

4 97. Because the Mortgage Loan is subject to RESPA and Regulation X, all
5 Defendants were required to comply with Section 6 of RESPA appearing at 12
6 U.S.C. § 2605., Defendant violated Section 6 of Regulation X upon receipt of
7 Plaintiffs' QWR by their actions including, but not limited to; (a) failure to make
8 appropriate corrections in the account of the borrower, including the crediting of
9 any late charges or penalties, and transmit to the borrower a written notification of
10 the correction; and (b) failure to protect Plaintiffs' credit rating upon receipt of
11 QWR by furnishing adverse information regarding payment to credit reporting
12 agencies as defined in § 603 of the Fair Credit Reporting Act, 15 U.S.C. § 1681(a).

13 98. Thus, CitiMortgage, Inc violated 12 U.S.C. § 2605 and its subject to
14 statutory damages, civil liability, penalties, attorneys' fees and actual damages. *See*
15 12 U.S.C. § 2605. The actual pecuniary damages include, but are not limited to, the
16 over calculation and overpayment of interest on Plaintiffs' loan, the costs of
17 repairing Plaintiffs' credit, the reduction and/or elimination of Plaintiffs' credit
18 limits, costs associated with removing the cloud on their property title and setting
19 aside the trustee's sale, and attorneys' fees and costs, in an amount to be proven at
20 trial, but in excess of \$75,000.00.

21 99. As a direct and proximate result of the violations of RESPA and
22 Regulation X by CitiMortgage, Inc Plaintiffs have suffered actual pecuniary
23 damages, including but not limited to statutory damages, civil liability, and
24 attorneys' fees, in an amount to be proven at trial.

25 ///

26 ///

27 ///

28 ///

FIFTH CAUSE OF ACTION
FOR VIOLATION OF 15 U.S.C. § 1692, ET SEQ.

[Against All Defendants and Doe Defendants]

100. Plaintiffs hereby incorporate by reference each and every one of the preceding paragraphs as if the same were fully set forth herein.

101. Federal law prohibits the use of any “any false, deceptive, or misleading representation or means in connection with the collection of any debt.....including the false representation of...the character, amount, or legal status of any debt...and the threat to take any action that cannot legally be taken...”

102. In illegally attempting to collect on Plaintiffs’ debt obligation in the manner described herein, Defendants CitiMortgage, Inc as the purported assignee, and CitiMortgage, Inc, as purported mortgage servicer:

- a) falsely represented the status of the debt, in particular, that it was due and owing to Defendant CitiMortgage, Inc at the time the suit was filed;
- b) falsely represented or implied that the debt was owing to Defendant CitiMortgage, Inc as an innocent purchaser for value, when in fact, such an assignment had not been accomplished;
- c) threatened to take action, namely engaging in collection activities that cannot legally be taken by them; and
- d) attempted to collect on the promissory note under false pretenses; namely that CitiMortgage, Inc was assigned Plaintiffs’ debt when in fact they were not.

103. Illegally collecting on alleged debts that were in default. “The Senate report emphasized the application of this section 15 U.S.C. § 1692(a) §§ 4.3.10 to mortgage service companies and others who service outstanding debts for others,

so long as the debts were not in default when taken for servicing. The Defendants violated the statute by their alleged assignments being filed many months after the debt had been in default. The Defendant's actions were illegal in their attempts to collect on the alleged debts as debt collectors claiming to be beneficiaries and creditors of the alleged debt. The Defendants have misrepresented the "character, amount and the legal status of the alleged debt".

SIXTH CAUSE OF ACTION

VIOLATION OF BUS. AND PROF. CODE SECTION 17200, ET SEQ.

[Against All Defendants and Doe Defendants]

104. Plaintiffs hereby incorporate by reference each and every one of the preceding paragraphs as if the same were fully set forth herein.

105. Defendants' conduct, for the reasons stated herein, is in direct violation of 12 U.S.C. § 2605(e), et seq.

106. Defendants' conduct, for the reasons stated herein, is in direct violation of Cal. Penal Code section 532(f)(a)(4).

107. Cal. Bus and Prof. Code section 17200, et seq., prohibits acts of unfair competition, which means and includes any unlawful, unfair, or fraudulent business act and conduct which is likely to deceive and is fraudulent in nature.

108. As more fully described above, Defendants' acts and practices are unlawful, unfair, and fraudulent. This conduct is ongoing and continues to this date.

109. Defendants engage in unfair, unlawful¹⁸, and fraudulent business practices with respect to mortgage loan servicing, and related matters by, among other things:

¹⁸ "Unlawful" acts or practices are those forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, or court-made. *Sanders v. Superior Court*, 27 Cal. 4th 832(1994); *Hewlett v. Squaw Valley*, 54 Cal. 4th 499 (1997).

- a) executing and recording false and misleading documents¹⁹;
- b) executing and recording documents without the legal authority to do so;
- c) failing to disclose the principal for which documents were being executed and recorded in violation of Cal. Civ. Code section 1095;
- d) demanding and accepting payments for debts that were non-existent;
- e) violating the Security First Rule;
- f) reporting payments as late to credit bureaus without the legal right or authority to do so;
- g) acting as beneficiary without the legal authority to do so
- h) other deceptive business practices as described herein.

110. As more fully described above, defendants' acts and practices are likely to deceive members of the public.

111. Plaintiffs allege that by engaging in the above described acts and/or practices as alleged herein; Defendants violate several laws including Cal Bus. And Prof. Code section 17200, et seq. and must be required to disgorge all profits related to their unfair, unlawful, and deceptive business practices.

112. Plaintiffs allege that Defendants' misconduct, as alleged herein, gave defendants an unfair competitive advantage over competitors. The scheme implemented by Defendants is designed to defraud California consumers and enrich the defendants.

113. The foregoing acts and practices have caused substantial harm to California consumers, including Plaintiffs.

114. By reason of the foregoing, Defendants have been unjustly enriched and should be required to make restitution to Plaintiffs and other California

¹⁹ Defendants' recording of the Corporate Assignment of Deed of Trust violates Cal. Penal Code section 532 (f)(a)(4), which prohibits any person from filing a document related to a mortgage loan transaction with the county recorder's office which that person knows to contain a deliberate misstatement, misrepresentation, or omission. The facts demonstrate that defendants have committed mortgage fraud by filing the Corporate Assignment of Deed of Trust with the county recorder's office with the knowledge that the document contained a deliberate misstatement, misrepresentation, or omission of fact.

1 consumers who have been harmed, and/or be enjoined from continuing in such
2 practices pursuant to Cal. Bus. and Prof. Code sections 17203 and 17204.

3 115. As a direct and proximate result of the actions of Defendants, and each
4 of them, stated above, Plaintiffs have been injured in that a cloud has been placed
5 upon title to Plaintiffs' property and Defendants have failed to remove this cloud
6 from Plaintiffs' title.

7 116. Plaintiffs are entitled to an order compelling CitiMortgage, Inc and any
8 other Defendants claiming an interest in and to the property to take any and all
9 actions necessary to remove the cloud they have placed upon her title and order
10 enjoining such Defendants from taking such actions again in the future.

11 **SEVENTH CAUSE OF ACTION - ACCOUNTING**

12 **[Against All Defendants and Doe Defendants]**

13 117. Plaintiffs hereby incorporate by reference each and every one of the
14 preceding paragraphs as if the same were fully set forth herein.

15 118. CitiMortgage, Inc as its purported agent; have held themselves out to
16 be Plaintiffs' creditor and mortgage servicer. As a result of this purported
17 relationship with Plaintiffs said Defendants have a fiduciary duty to Plaintiffs to
18 properly account for payments made by Plaintiffs.²⁰

19 119. As a result of the aforementioned fraudulent conduct, Plaintiffs paid
20 CitiMortgage, Inc their mortgage payments for a period of approximately 5 and
21 half years. However, for the reasons stated herein, none of this money was actually
22 owed to CitiMortgage, Inc. For that reason, these monies are due to be returned to
23 Plaintiffs in full.

24
25
26 ²⁰ To state a cause of action for accounting, a Plaintiff must allege the existence of a fiduciary
27 relationship, or accounts so complicated that an ordinary legal action demanding a fixed sum is
28 impracticable. 5 Witkin, Cal. Proc. 4th (1997) Pleading, section 775, p. 233. The elements for a claim for
accounting are: 1) fiduciary relationship or other circumstances appropriate to the remedy; and 2) a
balance due from the defendant to the Plaintiffs that can only be ascertained by an accounting. *See*
Witkin, California Procedure, Pleadings, section 776, p. 233 (4th ed.)

1 120. The amount of the money due from Defendants to Plaintiffs is
2 unknown to Plaintiffs and cannot be ascertained without an accounting of the
3 receipts and disbursements of the aforementioned transactions. Plaintiffs are
4 informed and believe and thereon allege that the amount due to them exceeds
5 \$75,000.00.

6 **WHEREFORE, Plaintiffs prays as follows:**

7 1. For compensatory, special and general damages in an amount according
8 to proof at trial, but not less than \$6,750,000.00, against all Defendants;

9 2. For punitive and exemplary damages in an amount to be determined by
10 the Court against all Defendants;

11 3. For an order compelling Defendants to remove any instrument which
12 does or could be construed as constituting a cloud upon Plaintiffs' title to the
13 property, including the purported "Corporate Assignment of Deed of Trust";

14 4. For an order finding that Defendants have no legally cognizable rights as
15 to Plaintiffs, the property, Plaintiffs' Promissory Note, Plaintiffs' Deed of Trust or
16 any other matter based on contract or any of the documents prepared by
17 Defendants, tendered to and executed by Plaintiffs;

18 5. For the Court to issue an order restraining Defendants, their agents or
19 employees from continuing or initiating any action against the property and
20 enjoining Defendants, their agents or employees from doing so during the
21 pendency of this matter;

22 6. For an order compelling Defendants to disgorge all amounts wrongfully
23 taken by them from Plaintiffs and returning the same to Plaintiffs' interest thereon
24 at the statutory rate from the date the funds were first received from Plaintiffs;

25 7. For costs of suit incurred herein;

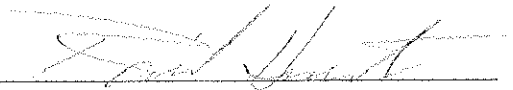
26 8. For reasonable attorneys' fees incurred; and

27 9. For such other and further relief as the Court may deem proper.
28

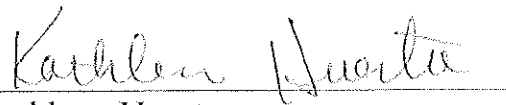
DEMAND FOR JURY TRIAL

The Plaintiffs' Raul Huerta and Kathleen Huerta; hereby requests a jury trial on all issues raised in this complaint under the Seventh Amendment to the U.S Constitution in accordance with "Federal Rule of Civil Procedure 38."

Dated: 10/3/12


Raul Huerta,
Plaintiff in Pro Per
Without Recourse

Dated: 10-3-12


Kathleen Huerta,
Plaintiff in Pro Per
Without Recourse

LIST OF EXHIBITS

Pursuant to *18 U.S.C. 1961(9)*, Plaintiffs now formally incorporates Her and Her *documentary material* by reference to all of the following Exhibits, as if set forth fully here, to wit:

Exhibit A – Corporate Assignment of Deed of Trust – 2 pages w/cover

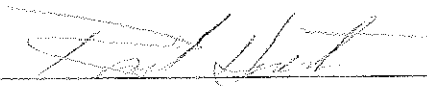
Exhibit B - MERS (Terms and Conditions) – 3 pages w/cover

Total Exhibit pages attached – 5

VERIFICATION

I, Raul Huerta, Plaintiff in the above entitled action, hereby verify under penalty of perjury, under the laws of the United States of America, without the "United States" (Federal Government), that the above statement of facts and laws is true and correct, according to the best of my current information, knowledge, and belief, so help me God, pursuant to 28 U.S.C. 1746(1). See the Supremacy Clause in the Constitution for the United States of America, as lawfully amended (hereinafter "U.S. Constitution").

Dated: 10/3/12


Raul Huerta

ACKNOWLEDGEMENT

State of California

County of (San Bernardino)

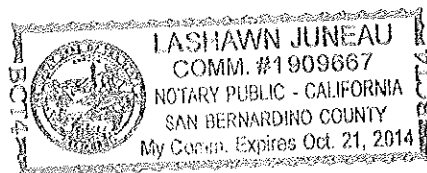
On October 3, 2012 before me Lashawn Juneau, Notary Public

Personally appeared Raul Huerta, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledgement to me that he / she / they executed the same in ^{is not} her / her / their authorized capacity (ies), and that by ^{is not} her / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the state of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)



ACKNOWLEDGEMENT

State of California

County of (San Bernardino)

On October 3rd, 2012 before me Lashawn Juneau, Notary Public

Personally appeared Kathleen Huerta, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledgement to me that he / she / they executed the same in her / her / their authorized capacity (ies), and that by her / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the state of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)

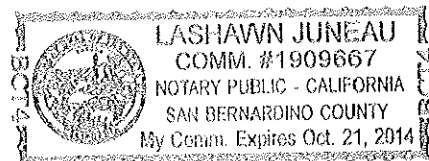


EXHIBIT “A”

Electronically Recorded in Official Records, County of San Bernardino

3/26/2012
11:06 AM
DB**DENNIS DRAEGER**
ASSESSOR - RECORDER - CLERK
906 Nationwide Title Clearing, Inc

[RECORDING REQUESTED BY]
INGEO
[AND WHEN RECORDED MAIL TO]
CitiMortgage, Inc.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Doc #: 2012-0114679

Titles: 1 Pages: 1



Fees	18.00
Taxes	.00
Other	.00
PAID	18.00

Investor L#

Tax Code/PIN: 1100-041-21

**CORPORATE ASSIGNMENT OF DEED OF TRUST**

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR AEGIS WHOLESALE CORPORATION, ITS SUCCESSORS AND ASSIGNS, (ASSIGNOR)**, (MERS Address: P.O. Box 2026, Flint, Michigan 48501-2026) by these presents does convey, grant, sell, assign, transfer and set over the described Deed of Trust, without recourse, representation or warranty, together with all rights, title and interest secured thereby, all liens, and any rights due or to become due thereon to **CITIMORTGAGE, INC., WHOSE ADDRESS IS 1000 TECHNOLOGY DRIVE, O'FALLON, MO 63368-2240 (800)283-7918, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE)**.


Said Deed of Trust made by **RAUL HUERTA AND KATHLEEN HUERTA** and recorded on 10/20/2008 as Instrument # 2006-0717293, in Book , Page in the office of the SAN BERNARDINO County Recorder, CA.

IN WITNESS WHEREOF, this Assignment is executed on 03/23/2012
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR AEGIS WHOLESALE CORPORATION, ITS SUCCESSORS AND ASSIGNS


DERRICK WHITE
ASST. SECRETARY

STATE OF FLORIDA COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me on this 23rd day of March in the year 2012, by DERRICK WHITE as ASST. SECRETARY for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR AEGIS WHOLESALE CORPORATION, ITS SUCCESSORS AND ASSIGNS, who, as such ASST. SECRETARY being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.


TAMMI MYLEK WILLIAMS NOTARY PUBLIC
COMM. EXPIRES: DEC. 05, 2014



TAMMI MYLEK WILLIAMS
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE046810
Expires 12/5/2014

Prepared By: E.Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
CIMAV 15927386 MERS (MOM) LOANS MIN 100053030010277037 MERS PHONE 1-888-679-MERS
EFMCAI



15927386

EXHIBIT “B”



TERMS AND CONDITIONS

1. MERS, which shall include MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc., and the Member shall abide by these Terms and Conditions, the Rules and Procedures (collectively, the "Governing Documents"), copies of which will be supplied upon request. The Governing Documents shall be a part of the terms and conditions of every transaction that the Member may make or have with MERS or the MERS® System either directly or through a third party. The Member shall be bound by any amendment to any of the Governing Documents.
2. The Member, at its own expense, shall promptly, or as soon as practicable, cause MERS to appear in the appropriate public records as the mortgagee of record with respect to each mortgage loan that the Member registers on the MERS® System. MERS shall serve as mortgagee of record with respect to all such mortgage loans solely as a nominee, in an administrative capacity, for the beneficial owner or owners thereof from time to time. MERS shall have no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans. MERS agrees not to assert any rights (other than rights specified in the Governing Documents) with respect to such mortgage loans or mortgaged properties. References herein to "mortgage(s)" and "mortgagee of record" shall include deed(s) of trust and beneficiary under a deed of trust and any other form of security instrument under applicable state law.
3. MERS shall at all times comply with the instructions of the holder of mortgage loan promissory notes. In the absence of contrary instructions from the note holder, MERS shall comply with instructions from the Servicer shown on the MERS® System in accordance with the Rules and Procedures of MERS.
4. No rights or obligations of the Member with respect to any data or information supplied to MERS by or on behalf of the Member shall be altered or affected in any manner by the provision of such data or information to MERS (except as otherwise specifically provided in these Terms and Conditions or the Rules of Membership).
5. If the Member uses MERS as Original Mortgagee (MOM) on the security instrument, the loan must be registered on the MERS® System within 10 days of the Note Date.
6. MERS and the Member agree that: (i) the MERS® System is not a vehicle for creating or transferring beneficial interests in mortgage loans, (ii) transfers of servicing interests reflected on the MERS® System are subject to the consent of the beneficial owner of the mortgage loans, and (iii) membership in MERS or use of the MERS® System shall not modify or supersede any agreement between or among the Members having interests in mortgage loans registered on the MERS® System.
7. If the Member has a third-party register loans (the "Registrar") on the MERS® System on behalf of the Member, the Registrar shall not be deemed an agent of MERS. The Registrar shall be solely an agent for the Member, and MERS is only giving consent to the Member to use a Registrar to enter information on the MERS® System on behalf of the Member. The Member agrees that MERS is not liable to the Member for any errors and omissions, negligence, breach of confidentiality, breach of the Rules and Procedures, or willful misconduct of the Registrar, or any employee, director, officer, agent or affiliate of the Registrar in performing its services to the Member.
8. The Member shall promptly pay to MERS the compensation due it for transactions registered on the MERS® System and other services rendered to the Member based on the then current MERS fee schedules, which may change from time to time. The Member shall promptly pay to MERS any interest and penalties on delinquent fee payments at the rate set by MERS from time to time. MERS shall have the authority to impose reasonable penalties and fines on Members for breach of the Governing Documents, and the Member shall promptly pay such fines in accordance with the terms of their imposition.
9. MERS shall indemnify and hold harmless the Member, and any employee, director, officer, agent or affiliate of the Member ("Member Party"), from and against any and all third-party claims, losses, penalties, fines, forfeitures, reasonable attorney fees and related costs, judgments, and any other costs, fees and expenses ("Indemnified Payments") that the Member Party may sustain directly from the negligence, errors and omissions, breach of confidentiality, breach of the Terms and Conditions, breach of the Rules and Procedures, or willful misconduct of MERS, or any employee, director, officer, agent or affiliate of MERS ("MERS Indemnified Claim"). Notwithstanding the foregoing, MERS shall not be liable or responsible under the terms of this Paragraph for any losses or claims

VC10052000VA

resulting from the actions or omissions of any person other than an employee, director, officer (who is also an employee of MERS), agent or affiliate of MERS.

The Member shall indemnify and hold harmless MERS, and any employee, director, officer, agent or affiliate of MERS ("MERS Party"), for any Indemnified Payments which do not result from a MERS Indemnified Claim and which such MERS Party incurs (i) from the negligence, errors and omissions, breach of confidentiality, breach of the Terms and Conditions, Rules and Procedures, or willful misconduct of a Member Party, (ii) with respect to a transaction on the MERS® System initiated by such Member, or (iii) as a result of compliance by MERS with instructions given by the Member, or its designee, as beneficial owner, servicer or secured party shown on the MERS® System ("Member Indemnified Claim").

MERS shall promptly notify the Member if a claim is made by a third party against either MERS or the Member with respect to any mortgage loan registered on the MERS® System in which the Member is shown on the MERS® System as beneficial owner, servicer or secured party in accordance with the Rules and Procedures. The Member shall promptly notify MERS if a claim is made against the Member that may be subject to the indemnification provisions of this Paragraph.

The obligations of MERS and the Member under this Paragraph shall survive the termination of the Member's use of the MERS® System.

10. MERS and the Member shall maintain appropriate insurance coverage that shall include an errors and omissions insurance policy and a fidelity bond. MERS shall not be required to maintain coverage for persons who may be appointed at the request of the Member as certifying officers of MERS. The Member's policies shall protect and insure MERS against losses in connection with the release or satisfaction of a mortgage loan without having obtained payment in full of the indebtedness secured thereby. Upon request, MERS or the Member shall cause to be delivered to the other a certified true copy of such errors and omissions insurance policy and fidelity bond.

In the event of any loss of principal or interest on a mortgage loan or any Indemnified Payments for which reimbursement is received from a fidelity bond or any errors and omissions insurance policy or other insurance policy, the proceeds from any such bond or insurance shall be held in trust for and be promptly paid to the Member who is shown as the servicer on the MERS® System on behalf of the beneficial owner unless otherwise requested by the beneficial owner.

11. Any notice or other communication which is required or permitted to be given or made to MERS pursuant to any provision of the Governing Documents shall be given or made in writing and shall be sent by nationally recognized overnight courier, or facsimile followed by delivery of the original via first-class mail, addressed as follows: MERS, Corporate Secretary, 1818 Library Street, Suite 300, Reston, Virginia, 20190.
12. These Terms and Conditions and all transactions effected by the Member with MERS shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to its choice of law provisions.
13. Neither the Member nor MERS shall institute a proceeding before any tribunal to resolve any controversy or claim arising out of or relating to these Terms and Conditions, Rules and Procedures, or the breach, termination or invalidity thereof (a "Dispute"), before such party has sought to resolve the Dispute through direct negotiation with the other party. If the Dispute is not resolved within thirty (30) days after a written demand for direct negotiation, the parties shall attempt to resolve the Dispute through mediation. If the parties do not promptly agree on a mediator, either party may request the then chief judge of the Circuit Court of Fairfax County, Virginia to appoint a mediator. All mediation proceedings hereunder shall be held in Washington, D.C. If the mediator is unable to facilitate a settlement of the Dispute within a reasonable period of time, as determined by the mediator, the mediator shall issue a written statement to the parties to that effect and the aggrieved party may then seek relief in accordance with the arbitration provisions of this Paragraph. The fees and expenses of the mediator shall be paid by the party initiating the Dispute.

In the event that the Member and MERS are not able to resolve a Dispute in accordance with the mediation provisions of this Paragraph, such Dispute shall be settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof; provided, however, that the place of arbitration shall be Washington, DC, and fees and expenses for the arbitration proceedings shall be paid by the party initiating arbitration.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Virginia A. Phillips and the assigned discovery Magistrate Judge is Sheri Pym.

The case number on all documents filed with the Court should read as follows:

EDCV12- 1702 VAP (SPx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☒ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input checked="" type="checkbox"/> RAUL HUERTA & KATHLEEN HUERTA	DEFENDANTS CITIMORTGAGE, INC.; QUALITY LOAN SERVICE CORPORATION; and DOES 1 THROUGH 10 INCLUSIVE,
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) RAUL HUERTA & KATHLEEN HUERTA In Pro Per 13024 MALVASIA WAY Cell: (909) 899-9562 RANCHO CUCAMONGA, CA 91739	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES – For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%;"> <tr> <th style="text-align: left;">Plaintiff</th> <th style="text-align: left;">Defendant</th> </tr> <tr> <td> <input type="checkbox"/> Citizen of This State <input type="checkbox"/> Citizen of Another State <input type="checkbox"/> Citizen or Subject of a Foreign Country </td> <td> <input type="checkbox"/> 1 Incorporated or Principal Place of Business in this State <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 3 Foreign Nation </td> </tr> </table>	Plaintiff	Defendant	<input type="checkbox"/> Citizen of This State <input type="checkbox"/> Citizen of Another State <input type="checkbox"/> Citizen or Subject of a Foreign Country	<input type="checkbox"/> 1 Incorporated or Principal Place of Business in this State <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 3 Foreign Nation
Plaintiff	Defendant				
<input type="checkbox"/> Citizen of This State <input type="checkbox"/> Citizen of Another State <input type="checkbox"/> Citizen or Subject of a Foreign Country	<input type="checkbox"/> 1 Incorporated or Principal Place of Business in this State <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 3 Foreign Nation				

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify):
 ☐ 6 Multi-District Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 U.S.C. §1692-1692p, et seq.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER	LABOR
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 IHA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI (405(g)) <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: **ED CV 12 - 01702** **VAP** **SPX**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

CV-71 (05/08) CIVIL COVER SHEET Page 1 of 2

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or

☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: *	California County outside of this District; State, if other than California; or Foreign Country
San Bernardino County, California	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District: *	California County outside of this District; State, if other than California; or Foreign Country
	State of New York

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District: *	California County outside of this District; State, if other than California; or Foreign Country
San Bernardino County, California	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Franklin H. Heston

Date

10-3-12

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935ff(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Name & Address:

Raul Huerta & Kathleen Huerta, In Pro-Per
 13024 Malvasia Way
 Rancho Cucamonga, CA 91739
 Cell: (909) 899-9562

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

RAUL HUERTA & KATHLEEN HUERTA, *AS*

CASE NUMBER

ED CV 12 - 01702 *VAP*
 PLAINTIFF(S)

v.

CITIMORTGAGE, INC; QUALITY LOAN
 SERVICE CORPORATION; and DOES 1
 THROUGH 10 INCLUSIVE,

DEFENDANT(S).

SUMMONS *SPX*

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Raul Huerta & Kathleen Huerta, Pro Per, whose address is 13024 Malvasia Way, Rancho Cucamonga, CA 91739. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

TERRY NATISI

Clerk, U.S. District Court

Dated: OCT - 4 2012By: L. MURRAY
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].